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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,107	03/07/2007	Heinz Peter Vollmers	50308/013002	3677

27500

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PILLSBURY WINTHROP SHAW PITTMAN LLP

ATTENTION: DOCKETING DEPARTMENT

P.O BOX 10500

McLean, VA 22102

EXAMINER

DUFFY, BRADLEY

ART UNIT

PAPER NUMBER

1643

MAIL DATE

DELIVERY MODE

03/25/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/579,107

Applicant(s)

VOLLMERS ET AL.

Examiner

BRAD DUFFY

Art Unit

1643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-23, 27-33, 35-37, 42-45 and 47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 21-23, 27-33, 35-37, 42-45 and 47 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The preliminary amendment filed May 12, 2006 is acknowledged and has been entered. Claims 30, 36, 37 and 47 have been amended. Claims 1-20, 24-26, 34, 38-41, 46 and 48-88 have been newly added.
2. Claims 21-23, 27-33, 35-37, 42-45 and 47 are pending in this application and are currently subject to restriction.

Election/Restrictions

3. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 21-22, 27-28, 30-33, 35-37, 42-45 and 47, insofar as the claims are drawn to a purified polypeptide or antibody comprising the amino acid sequence of SEQ ID NO:5 or amino acids 31-35, 50-66, and 99-108 of SEQ ID NO:5.

Group II, claims 21, 23, 27, 29-33, 35-37, 42-45 and 47, insofar as the claims are drawn to a purified polypeptide or antibody comprising the amino acid sequence of SEQ ID NO:7 or amino acids 23-36, 53-58, and 91-101 of SEQ ID NO:7.

4. The inventions listed as Groups I-II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

To have a general inventive concept under PCT Rule 13.1, the inventions need to be linked by a special technical feature. Notably, PCT Rule 13.2 sets forth that alternatives claimed in the same claim are linked by a special technical feature when the alternatives are of a similar nature. In this case the inventions of Groups I and II and not of a similar nature because, e.g., while polypeptides comprising the amino acid

sequence of SEQ ID NO:5 or polypeptides comprising the amino acid sequence of SEQ ID NO:7 appear to share similar activities such as inducing apoptosis in neoplastic cells (see e.g., claim 44) since these polypeptides differ in amino acid sequence these polypeptides do not appear to share a significant structural element responsible for these activities. Therefore, the inventions of Groups I and II are not linked by a special technical feature as set forth by PCT Rule 13.2.

For these reasons, the special technical feature of the invention of Group I is a purified polypeptide or antibody comprising the amino acid sequence of SEQ ID NO:5 or amino acids 31-35, 50-66, and 99-108 of SEQ ID NO:5.

The special technical feature of the invention of Group II is a purified polypeptide or antibody comprising the amino acid sequence of SEQ ID NO:7 or amino acids 23-36, 53-58, and 91-101 of SEQ ID NO:7.

Accordingly the groups are not so linked as to form a single general concept under PCT Rule 13.1.

5. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103 (a) of the other invention.

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6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(l).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brad Duffy whose telephone number is (571) 272-9935. The examiner can normally be reached at Monday through Friday from 7:00 AM to 4:30 PM, with alternate Fridays off. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Helms, can be reached at (571) 272-0832. The official fax number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Respectfully,
Brad Duffy
571-272-9935

/Stephen L. Rawlings/
Stephen L. Rawlings, Ph.D.
Primary Examiner, Art Unit 1643

/bd/
Examiner, Art Unit 1643
March 18, 2008

